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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 797

LINDSAY B. SHAFER, LEWIS SHAFER, JOSEPH SHAFER, AND LEWIS SHAFER, SR., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the District of Maryland (Appellants' App. 111–125)[1] is reported in 132 F. Supp. 659. The opinion of the United States Court of Appeals for the Fourth Circuit (Pet. App. 31–38) is reported in 229 F. 2d 124.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on

[1] The printed record consists of the appendices filed by the parties in the Court of Appeals. References to the record herein will be designated as "Appellants' App."

January 4, 1956 (Pet. App. 39). The petition for a writ of certiorari was filed March 26, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the Agricultural Adjustment Act of 1938, which directs the Secretary of Agriculture to provide "for measuring farms on which * * * wheat * * * is produced" and empowers him to prescribe such regulations as are "necessary" for enforcement of the Act, authorizes a regulation providing for entry upon farms if such entry will "facilitate measurement."

2. Whether the regulations authorizing entry on farms for purposes of measurement violates petitioners' rights under the Fourth, Fifth and Tenth Amendments.

3. Whether the regulations are invalid because they were issued by the Acting Secretary rather than by the Secretary.

4. Whether the district court had the power to enjoin petitioners from interfering with the measurement of their farms and, if so, whether it abused its discretion by granting such an injunction.

5. Whether the action was improperly brought (a) because there was no showing that the Secretary had requested the Attorney General to institute it, or (b) because it was brought by the United States rather than by the Secretary.

STATUTE AND REGULATIONS INVOLVED

The relevant provisions of the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31–77, 7 U. S. C. 1281 *et seq.*), are set forth in the petition, pp. 4–10. The relevant provisions of the regulations issued under the statute are set forth in Appellants' App. pp. 140–153.

STATEMENT

The petitioners are wheat farmers in Carroll County, Maryland. The issues relate to the right of agents of the Secretary of Agriculture to enter petitioners' farms in order to measure the wheat acreages thereon, in connection with the wheat marketing quota program under the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31–77, 7 U. S. C. 1281 *et seq.*).

The Act requires the Secretary each year to ascertain and promulgate the national acreage allotment for the next crop of wheat (Section 332, 7 U. S. C. 1332), and to apportion this allotment among the states (Section 334, 7 U. S. C. 1334). The state allotments in turn are apportioned among the counties, and the county allotments are apportioned, through local committees, among the farms within the county (Section 334, 7 U. S. C. 1334). The Act also directs the Secretary to determine and proclaim a national marketing quota for wheat for any year in which he determines, *inter alia*, that the total supply of wheat will exceed the normal supply by more than 20% (Sec-

tion 335, 7 U. S. C. 1335). Prior to the quota becoming effective, however, the Secretary is required to conduct a referendum of all farmers who will be subject to it, and if more than one third of those voting oppose the quota, the Secretary is required to suspend its operation (Section 336, 7 U. S. C. 1336). The marketing quota for individual farms is then determined according to a formula.

Pursuant to these provisions, the Secretary established marketing quotas of wheat for the 1955–56 marketing year (19 F. R. 3863, 4058, 5625), fixed the national acreage allotment (19 F. R. 3863, 4058), and apportioned that allotment among the states, counties and farms (19 F. R. 4132; 20 F. R. 7856; 21 F. R. 446). A referendum was held, in which 73.3% of the farmers voted in favor of the quota (Pet. App. 33). Petitioners were given an allotment for their farms (Appellants' App. 3, 14–15).

The pertinent regulations promulgated by the Secretary direct the county committees to provide for the measurement of (1) all farms in the county having a 1955 wheat acreage allotment, and (2) any other farms with respect to which the Committee has reason to believe there is wheat which would be available for harvest in 1955, regardless of its intended use (§ 728.555, 20 F. R. 1621). The measurement is stated to be for the purpose of ascertaining the acreage of wheat and whether the acreage exceeds the 1955 allotment for the farm (*ibid.*). The regulations further provide that a "reporter shall visit each farm as-

signed to him for measurement and enter thereon if such entry will facilitate measurement * * *" (*ibid.*).

Pursuant to its obligation to provide for the measurement of all farms in Carroll County having a 1955 wheat acreage allotment, the County Committee directed its reporter and an agent of the Secretary to measure the 1955 wheat acreages on petitioners' farms. Petitioners, however, refused to permit them to enter their farms to make such measurements, and threatened to inflict bodily harm upon them (Appellants' App. 4, 15–16, 60–63). The United States then instituted this action to restrain petitioners from "interfering with, or by threats of force and violence preventing, the measurement of the wheat acreages" on their farms (Appellants' App. 5). After hearing at which evidence was adduced, the district court entered a judgment enjoining petitioners from preventing or interfering in any way with the measurement of the 1955 wheat acreage on their farms or from threatening or inflicting bodily harm upon agents of the Secretary who entered their farms for taking measurements (Appellants' App. 126).

The court found, on the basis of the agents' testimony (Appellants' App. 55, 66–67, 86–89), that the agents "could not see what was growing" in some of petitioners' fields "without entering thereon," and that with respect to certain other fields they "could see from the road what was growing alongside the road, but could

not see the whole field" (Appellant's App. 114). It further found (*ibid.*) that entry on the farms "will facilitate measurement." The court concluded (Appellants' App. 121–122) that measurement of the farms to determine the acreage planted to wheat "is necessary to determine whether the wheat acreage on the farm is within the farm marketing quota * * * [and] to obtain other information required to carry out the general purposes of the Act." It pointed out (*ibid.*) that a farm's wheat acreage during the three preceding years is important in fixing the wheat acreage allotment for that farm, and that information as to the total acreage planted to wheat and the use made of that wheat is "essential for determining the total supply of wheat and the normal supply of wheat and other facts which are the bases for various determinations by the Secretary * * *." The court rejected petitioners' contentions that the Act does not authorize entry for purposes of measurement, that the regulations providing for such entry were improperly promulgated and are unconstitutional, that only the Secretary and not the United States could bring the suit, and that the Act does not authorize injunctive relief (Appellants' App. 114–123).

The court of appeals unanimously affirmed. The court pointed out (Pet. App. 35) that the Act "expressly authorizes measurement," and that "[e]nforcement of the Act without the right

of entry for the purposes of measurement would be impossible, as is shown in the pending case." The court held that the authority of the district court to issue an injunction "to aid in the enforcement of the Act" is "beyond doubt" (Pet. App. 36), that the regulations do not violate any of petitioners' constitutional rights (Pet. App. 36–37), and that the regulations are not invalid because they were promulgated by the Acting Secretary instead of by the Secretary (Pet. App. 37–38).

ARGUMENT

1. The statute plainly authorizes the regulations providing for entry on a wheat farm for the purpose of measuring the acreage planted in wheat. It directs the Secretary to "provide, through the county and local committees, *for measuring farms on which * * * wheat * * * is produced* [emphasis added] and for ascertaining whether the acreage planted for any year to any such commodity is in excess of the farm acreage allotment for such commodity for the farm * * *" (Section 374 (a), as amended, 7 U. S. C. 1374 (a)), and authorizes him to "prescribe such regulations as are necessary" for the enforcement of the statutory provisions (Section 375 (b), as amended, 7 U. S. C. 1375 (b)).

As the facts in the instant case demonstrate, accurate measurement of the acreage planted in wheat may be impossible unless the farm is entered and a close physical inspection is made.

Inspection from the highways or adjoining farms may be inadequate, and inspection from the air may be either inadequate or unduly expensive. Since effective administration of many of the statutory provisions depends upon accurate farm measurement,[2] we think it clear that Congress intended the Secretary to have full authority to provide for whatever inspections may be necessary to accomplish such measurement. Plainly, a regulation providing for entry if it will "facilitate measurement" is one that is "necessary" for "enforcement of the statutory provisions" for "measuring farms on which * * * wheat * * * is produced."

2. Petitioners' contentions (Pet. 17–18) that the regulations violate their constitutional rights under the Fourth, Fifth, and Tenth Amendments

[2] For example, the Act provides that a wheat allotment to a county "shall be apportioned by the Secretary, through the local committees, among the farms within the county on the basis of past acreage of wheat, tillable acres, crop-rotation practices, type of soil, and topography." Section 334 (c), 7 U. S. C. (Supp. II) 1334 (c). In determining the wheat acreage on a farm there is excluded, under certain circumstances, acreage which is planted in a "wheat mixture" as defined in the regulations. § 728.551 (s), (t), and (u) of the regulations; 20 F. R. 1621. Furthermore, it is sometimes necessary to determine what use was made of the wheat, *e. g.*, whether it was plowed or disced under within the specified period. Section 374 (c) as amended, 7 U. S. C. (Supp. II) 1374 (c); § 728.551 (u) of the regulations; 20 F. R. 1621. All of these determinations may require measurement which cannot be made without entry on the farm. Cf. *Lee* v. *DeBerry*, 219 S. C. 382, 65 S. E. 2d 775, 778–779, in which three agents of the Secretary measured a tobacco farm to determine a quota by making "physical measurements on the land, with a chain designed for the purpose."

have no substance. An inspection of open fields or farm lands is not a search or seizure of petitioners or of their houses, papers or effects within the meaning of the Fourth Amendment. *Hester* v. *United States,* 265 U. S. 57, 59; *Janney* v. *United States,* 206 F. 2d 601, 603–604 (C. A. 4); *Edwards* v. *United States,* 206 F. 2d 855, 856 (C. A. 10); *Martin* v. *United States,* 155 F. 2d 503, 505 (C. A. 5). The constitutionality of the Act as applied to production intended wholly for consumption on the farm was upheld both as a valid exercise of federal power under the Commerce Clause and against attack under the Fifth Amendment in *Wickard* v. *Filburn,* 317 U. S. 111.[28] The valid exercise of congressional power under the Commerce Clause does not violate the Tenth Amendment. See *Sanitary District* v. *United States,* 266 U. S. 405, 426; *United States* v. *California,* 297 U. S. 175, 184. Since the Act provides only civil penalties and not criminal sanctions for violation of the quota provisions, petitioners are not being compelled to incriminate themselves by submitting to physical inspection of their farms.

Nor is there any merit to petitioners' contention (Pet. 23–26) that the regulations are invalid because they were issued by the Acting Secretary rather than by the Secretary himself. The statute

[28] The Court there pointed out (p. 130) that "[c]ontrol of total supply, upon which the whole statutory plan is based, depends upon control of individual supply." Control of individual supply in turn depends upon measurement of the wheat on the individual farms, as explicitly authorized by the Act and the regulations.

vests the Acting Secretary with all the authority of the Secretary. 5 U. S. C. 4; see *Ryan* v. *United States*, 136 U. S. 68, 81. As this Court pointed out in *Morgan* v. *United States*, 298 U. S. 468, 479, upon which petitioners erroneously rely (Pet. 27), "the disposition of official matters by an Acting Secretary is frequently necessary and the integrity of administration demands that credit be given to his action in that capacity." Nothing has been shown to overcome the settled presumption that when a subordinate purports to act for his superior he is authorized to do so. See *United States* v. *Chemical Foundation*, 272 U. S. 1, 14–15; *Anderson* v. *P. W. Madsen Inv. Co.*, 72 F. 2d 768, 771 (C. A. 10).[3]

3. The district court clearly had the power to grant an injunction, and it exercised that power properly in enjoining petitioners from interfering with the measurement of their farms.

The statute gives the district court jurisdiction "specifically to enforce the provisions" of the Act (Section 376, 7 U. S. C. 1376)—a jurisdiction

[3] Contrary to petitioners' contention (Pet. 26–27), the holding below that the Acting Secretary was authorized to promulgate the regulations is not in conflict with *Cudahy Packing Co.* v. *Holland*, 315 U. S. 357. The *Cudahy* case held only that the Administrator of the Wage and Hour Division of the Department of Labor was not authorized to *delegate* his statutory subpoena power to a subordinate official of the Department. The instant case, however, involves no question as to delegation of power by the Secretary, but only whether the Acting Secretary validly acted for the Secretary.

which is broad enough to authorize injunctive relief. Furthermore, a district court has inherent equity power to grant injunctive relief in aid of the administration of a statute even though the statute does not expressly so provide. *Texas & N. O. R. Co.* v. *Ry. Clerks,* 281 U. S. 548, 569–571; *Sanitary District* v. *United States,* 266 U. S. 405, 426; *In re Debs,* 158 U. S. 564, 582–599; *Walling* v. *Brooklyn Braid Co.,* 152 F. 2d 938, 940–941 (C. A. 2).

In the case at bar, the granting of the injunction was necessary in order to permit the agents of the Secretary to determine the acreage planted to wheat on the petitioners' farms. The farms consisted of 226 acres and 168 acres (Appellants' App. 43, 46) and, as shown *supra,* pp. 5–6, the agents of the Secretary could not determine all of the acreage planted to wheat without entering on the fields and making accurate measurements. The district court therefore correctly held that entry would "facilitate measurement," and that the public interest required an injunction. Cf. *Hecht Co.* v. *Bowles,* 321 U. S. 321, 331; *Virginian Ry.* v. *Federation,* 300 U. S. 515, 552.[4]

There is no merit to petitioners' contention (Pet. 22–23) that the suit was improperly brought

[4] Petitioners are in error in their statement (Pet. 16–17) that the Secretary's assertion of the right to enter farms for purposes of measurement is contrary to the "long continued administrative construction" of the Act. Although the Act has been in force since 1938, wheat marketing quotas have

(a) because there was no showing that the Secretary had requested the Attorney General to institute the action, or (b) because the Secretary was a necessary party. The statute refers to a request by the Secretary only in case of an action to recover a statutory penalty (Section 376, 7 U. S. C. 1376). Since the instant action is one for an injunction, not a penalty, the Government was not required to show such a request as a condition to obtaining relief. The Attorney General is "customarily charged with representing the Government's interests in Court," and the "normal procedure [is that] of maintaining enforcement suits in the name of the United States itself." *United States* v. *Allied Oil Corp.*, 341 U. S. 1, 5. Suits to enforce the various statutes administered by the Secretary ordinarily are brought by the United States and not by the Secretary. Compare *Rodgers* v. *United States*, 332 U. S. 371, 372; *United States* v. *Ruzicka*, 329 U. S. 287, 289; *Usher* v. *United States*, 146 F. 2d 369 (C. A. 4).[5]

been imposed only for 3 full marketing years: 1941–1942, 1954–1955, and 1955–1956 (4 F. R. 2048; 5 F. R. 1725; 8 F. R. 6013, 13789; 9 F. R. 8283; 10 F. R. 8994; 11 F. R. 7763; 12 F. R. 4666; 13 F. R. 4009; 14 F. R. 3978; 15 F. R. 4170; 16 F. R. 6500; 17 F. R. 5634). During the last two of them, the Secretary has asserted the right to have his agents enter farms for taking measurements. See *United States* v. *Morelock*, 124 F. Supp. 932, 945 (D. Md.).

[5] The district court cases which petitioners cite as allegedly in conflict with the decision below (Pet. 28) involved suits by private parties seeking to enjoin enforcement of a statute

CONCLUSION

The decision below is clearly correct, there is no conflict of decisions, and the petition presents no question warranting further review by this Court. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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APRIL 1956.

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or regulation. There the administrative official was a necessary party defendant because he was the person against whom any injunction would have to run. Where, however, the Government is the moving party and it is seeking to enjoin violations of the Act, the administrative official is not a necessary party plaintiff.

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